

ROY PUGH

IBLA 70-55

Decided December 24, 1970

Color or Claim of Title: Good Faith

An applicant under the Color of Title Act is not entitled to a patent if he did not acquire his color of title in good faith without knowledge of the defect in title.

Color or Claim of Title: Cultivation and Improvements

A class 1 application for patent under the Color of Title Act will be denied where the applicant fails to show to the satisfaction of the Secretary that valuable improvements have been placed upon the land and no part of it has been cultivated.

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: ES 5343 (Ark.)

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: Color of title appli!
cation rejected

: Affirmed

DECISION

Roy Pugh appeals to the Secretary from a decision of the Office of Appeals and Hearings, Bureau of Land Management, dated April 18, 1969, which affirmed a decision of the New Orleans land office dated February 20, 1969. Both decisions rejected his class 1 color of title application to purchase the SW1/4 SE1/4 sec. 25, T. 16 N., R. 19 W., 5th P.M., Newton County, Arkansas.

The Color of Title Act, as amended, 43 U.S.C. § 1068 (1964), provides as applicable here that if a tract of public land has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and valuable improvements have been placed thereon or some part thereof has been reduced to cultivation, the Secretary of the Interior shall issue a patent to the applicant.

The record reveals that appellant's predecessor in interest filed a color of title application for the same lands on August 4, 1964, and appellant assisted him in the preparation of the application. The New Orleans land office rejected the application by written decision dated October 30, 1964, holding that the claim originated with a tax deed on August 19, 1947, and therefore the statutory minimum period of 20 years had not been satisfied. Upon receipt of this decision Mr. Pugh, appellant herein, corresponded with the New Orleans land office on behalf of the applicant and stated "we do not desire to appeal the ruling." (Emphasis added.) Therefore, the decision became final.

After waiting five years and obtaining a conveyance covering the same lands, Mr. Pugh filed the present application

on January 2, 1969. The decisions below denied the application essentially on the ground that Mr. Pugh could not be said to have acquired his color of title in good faith without knowledge of a defect in the title. We are in complete agreement with said decisions.

The record reveals without doubt that appellant cannot bring himself within the statute to qualify for a patent. By his participation in the attempt by his predecessor in interest to obtain a patent, he necessarily became aware of the fact that there was a defect of title and cannot be said to have been in "good faith." To satisfy the statute there must have been an unbroken chain of holding for more than 20 years before the claimant learns of his defect in title. Prentiss E. Furlow, 70 I.D. 500 (1963). Furthermore, appellant states in his argument that there have been no improvements made upon the land and none of the land is under cultivation. It is well recognized that these requirements go to the heart of satisfying the statute. Bobby Carlton, 74 I.D. 214 (1967); W. D. Reams, A-30113 (September 23, 1964); Margaret H. Erling, A-30437 (December 16, 1965).

Finally, appellant contends his failure to make improvements or do cultivation was a result of certain advice given him by a Bureau of Land Management employee. Such contention is highly questionable, but in any event it is well established that one cannot, either through misunderstanding or reliance on information or advice furnished by an employee of a land office, obtain any right or interest not provided by law. Oscar C. Collins, Standard Oil Company of California, 70 I.D. 359, 360 (1963); Fred and Mildred Bohlen et al., 63 I.D. 65 (1956); Mike Abraham, A-28163 (November 16, 1959).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Francis E. Mayhue, Member

I concur:

I concur:

Martin Ritvo, Member

Joan B. Thompson, Alternate Member

